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OFFICE OF PETITIONS

In re Application of
David Sawyer
Application No. 10/820,528
Filed: April 7, 2004
Attorney Docket No. 07844-0648001 /
P601

:
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed July 24, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from six hundred twelve (612) days to six hundred thirty-four (634) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is six hundred thirty-four (**634**) days. A copy of the updated PTA calculation, showing the correct determination, is enclosed.

On May 15, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is six hundred twelve (612) days. On July 24, 2009, applicants timely¹ submitted the instant application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is six hundred thirty-four (634) days. Applicants dispute the reduction of twenty-two (22) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed May 12, 2008.

The Office initially determined a patent term adjustment of six hundred twelve (612) days based on an adjustment for PTO delay of six hundred sixty-six (666) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delay of fifty-four (54) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 666 days has been reviewed and found to be correct. The reduction of twenty-two (22) days of applicant delay is at issue.

Applicants dispute the reduction of twenty-two (22) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed May 12, 2008.

¹ PALM records indicate that the Issue Fee was received in the Office on August 12, 2009.

Applicants argue that the non-Final Office Action mailed May 12, 2008 was re-mailed June 3, 2008 and the period for reply was restarted.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that applicants are correct. Any delay should be calculated based on the date of the Restarted Response Period and not based on the date of the mailing of the original Office action. As applicant's response was received within three months of the Letter Restarting Period for Response (the re-mailed Office action), there was no applicant delay within the meaning of 37 CFR § 1.704(b).

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the non-Final Office Action by 22 days. Accordingly, the period of reduction of 22 days is being removed.

The correct patent term adjustment at the time of the mailing of the Notice of Allowance is six hundred thirty-four days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management to issue the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

Enclosure: Copy of Revised PALM Screen

Day : Monday
Date: 11/9/2009

PALM INTRANET

Time: 12:10:58

PTA Calculations for Application: 10/820528

Application Filing Date:	04/07/2004	PTO Delay (PTO):	666
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	54
Post-Issue Petitions:	0	Total PTA (days):	634
PTO Delay Adjustment:	22		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
80	11/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	22		
70	05/15/2009	MAIL NOTICE OF ALLOWANCE			
69	05/12/2009	ISSUE REVISION COMPLETED			
68	05/12/2009	DOCUMENT VERIFICATION			
67	05/11/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
66	05/11/2009	NOTICE OF ALLOWABILITY			
65	02/26/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
64	02/26/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	02/26/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	03/13/2009	EMAIL NOTIFICATION			
61	03/13/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
60	02/25/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
59	02/26/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	03/04/2009	DATE FORWARDED TO EXAMINER			
57	02/26/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
56	03/04/2009	DATE FORWARDED TO EXAMINER			
55	02/26/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
54	03/04/2009	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

53	02/26/2009	FILED			
52	02/26/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
51	02/26/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
50	11/26/2008	ELECTRONIC REVIEW			
49	11/26/2008	EMAIL NOTIFICATION			
48	11/26/2008	MAIL FINAL REJECTION (PTOL - 326)			
47	11/20/2008	FINAL REJECTION			
46	09/19/2008	DATE FORWARDED TO EXAMINER			
45	09/03/2008	RESPONSE AFTER NON-FINAL ACTION		22	41
44	05/12/2008	MISCELLANEOUS INCOMING LETTER			
43	06/03/2008	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
42	05/29/2008	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
41	05/12/2008	MAIL NON-FINAL REJECTION			
40	05/09/2008	NON-FINAL REJECTION			
39	04/11/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
38	04/09/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
37	04/03/2008	CASE DOCKETED TO EXAMINER IN GAU			
36	03/07/2008	DATE FORWARDED TO EXAMINER			
35	02/11/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
34	03/07/2008	DATE FORWARDED TO EXAMINER			
33	02/11/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		31	24
32	03/07/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
31	02/11/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	02/11/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
29	01/23/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
28	01/08/2008	MAIL ADVISORY ACTION (PTOL - 303)			
27	01/07/2008	ADVISORY ACTION (PTOL-303)			
26	12/20/2007	DATE FORWARDED TO EXAMINER			
25	12/07/2007	AMENDMENT AFTER FINAL REJECTION			
24	10/11/2007	MAIL FINAL REJECTION (PTOL - 326)			

23	10/09/2007	FINAL REJECTION			
22	07/31/2007	MISCELLANEOUS INCOMING LETTER			
21	08/03/2007	DATE FORWARDED TO EXAMINER			
20	07/05/2007	RESPONSE AFTER NON-FINAL ACTION		1	17
19	07/18/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
18	05/30/2007	CASE DOCKETED TO EXAMINER IN GAU			
17	04/04/2007	MAIL NON-FINAL REJECTION	666		-1
16	03/30/2007	NON-FINAL REJECTION			
15	08/26/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
14	01/25/2007	CASE DOCKETED TO EXAMINER IN GAU			
13	01/19/2007	CASE DOCKETED TO EXAMINER IN GAU			
12	07/08/2004	NEW OR ADDITIONAL DRAWING FILED			
11	04/18/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	04/18/2005	CASE DOCKETED TO EXAMINER IN GAU			
9.7	08/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	08/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	06/22/2004	APPLICATION RETURN FROM OIPE			
7	06/22/2004	APPLICATION RETURN TO OIPE			
6	06/21/2004	APPLICATION DISPATCHED FROM OIPE			
5	06/22/2004	APPLICATION IS NOW COMPLETE			
4	05/11/2004	CLEARED BY OIPE CSR			
3	05/11/2004	CASE CLASSIFIED BY OIPE			
2	04/20/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/07/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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